

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

In re:	)	
	)	
PAUL TRANSPORTATION, INC.,	)	Case Number: 10-13022
Tax ID No. 71-0921816,	)	Chapter 11
	)	
Debtor.	)	

**MOTION FOR ORDER ENLARGING TIME WITHIN WHICH TO ASSUME  
OR REJECT UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY  
UNDER WHICH THE DEBTOR IS THE LESSEE AND BRIEF IN SUPPORT**

Pursuant to 11 U.S.C. § 365(d)(4)(B)(i) and Rule 9006(b)(1), F. R. Bankr.P., Paul Transportation, Inc., debtor in possession (the "DIP"), requests that this Court enlarge the time within which the DIP may assume or reject unexpired leases of nonresidential real property under which the debtor is the lessee. The DIP states as follows in support of this request:

1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409.
2. The statutory predicates for the relief sought through this Motion are 11 U.S.C. §§ 105(a) and 365.
3. The DIP filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 101, et seq., on May 18, 2010 (the "Petition Date"). The DIP is a debtor-in-possession with the rights, powers, and duties provided under 11 U.S.C. §§ 1107 and 1108.
4. The DIP is a privately-held Oklahoma corporation that was formed in 2002. It is headquartered in Enid, Oklahoma, and has been in active operation since 2003.
5. The DIP is a trucking company that provides flatbed transportation services across the lower 48 states. The DIP maintains service terminals in Oklahoma City, Oklahoma, Crosby,

Texas, and Fort Dodge, Iowa. The DIP also has a rock hauling division located in Medicine Lodge, Kansas.

6. The DIP is the lessee under the following non-residential real property leases: (a) lease dated February 17, 2010, with East End Equipment Sales, Inc., for the DIP's service terminal in Crosby, Texas; (b) lease dated April 12, 2010 with James R and Patricia Albert Living Trust, for the DIP's accounting office in Altus, Oklahoma; (c) lease dated October 14, 2010 with Majors Investments, for the DIP's service terminal in Oklahoma City, Oklahoma; (d) real estate lease dated November 1, 2007 with Messers Bowers Company, for the DIP's headquarters in Enid, Oklahoma; and (e) lease with Dean and Tina Anderson, for the DIP's service terminal in Fort Dodge, Iowa (collectively, the "Leases").

7. Under 11 U.S.C. § 365(d)(4)(A), unexpired leases of nonresidential real property under which the debtor is the lessee, such as the Leases, that have not been assumed will be deemed rejected on the earlier of 120 days from the Petition Date (*i.e.*, September 15, 2010), or the date a plan confirmation order is entered, unless the enlargement requested herein is granted.

8. The role the Leases may play in the DIP's reorganization is unclear at this time. The DIP does not want to create significant, unnecessary, administrative expenses, which could occur if the DIP improvidently assumes the Leases. Alternatively, the DIP does not want to lose the benefits of the Leases, which will occur 120 days from the Petition Date, unless the Leases are assumed before then or the enlargement requested herein is granted. If the Leases were deemed rejected under 11 U.S.C. § 365(d)(4) by a failure to assume them timely, the deemed

rejection would result in a significant loss of value to the estate. The extension requested herein would permit the DIP to avoid all of these potentially-adverse consequences.

9. For the reasons set forth above, the DIP requests the Court to enlarge the time within which the DIP may assume or reject the Leases for 90 days beyond the 120-day period specified in 11 U.S.C. § 364(d)(4)(A)(i), unless a party in interest requests, and the Court subsequently sets, a different specified period within which the DIP must determine whether to assume or reject the Leases. The relief requested herein is permitted by 11 U.S.C. § 364(d)(4)(B)(i); see also, 11 U.S.C. § 365(d)(2).

10. The factors to be considered by the Court in determining whether to grant an extension under 11 U.S.C. § 365(d)(4) include whether:

- a. the lease is a primary asset of the estate;
- b. the landlord would receive a windfall;
- c. the rent has been or is being paid;
- d. the case is unusually large or complex; and
- e. the representative of the estate has had a reasonable period of time to analyze the estate.

See *Escondido Mission Village L.P. v. Best Prods. Co.*, 137 B.R. 114 (Bankr. S.D.N.Y. 1992); *In re 611 Sixth Ave. Corp.*, 191 B.R. 295 (Bankr. S.D.N.Y. 1996) (including additional factors); *In re Columbus One Parcel Servs., Inc.*, 138 B.R. 194 (Bankr. S.D. Ohio 1992); *In re Muir Training Technologies, Inc.*, 24 C.B.C.2d 780, 120 B.R. 154 (Bankr. S.D. Cal. 1990).

11. Consideration of the factors set out above in the context of this case indicates that the relief requested herein should be granted and that good cause under 11 U.S.C.

§ 365(d)(4)(B)(i) and Rule 9006(b)(1), F.R.Bankr.P., exists to grant the requested relief. The

Leases are primary assets of the estate, and the rent under the Leases has been and is being paid.

This is a relatively large, relatively complex, case, and the DIP has not yet had a reasonable period to analyze the estate.

12. The DIP has not requested or been granted any previous enlargement of time within which to assume or reject unexpired nonresidential real property leases under which the debtor is the lessee.

13. The extension requested herein will not have any impact on scheduled trial or other deadlines. •

14. The order being requested by the DIP is being sought without prejudice to any lessor's right to request the Court to set an earlier assumption or rejection decision by the DIP.

WHEREFORE, Paul Transportation, Inc., requests that this Court enlarge by 90 days, *i.e.*, to and including December 14, 2010, the time within which Paul Transportation, Inc., may assume or reject unexpired leases of nonresidential real property under which it is the lessee, unless a party in interest requests, and the Court subsequently sets, a different specified period within which Paul Transportation, Inc., must determine whether to assume or reject unexpired leases under which the debtor is the lessee.

Respectfully submitted,

/s/Stephen W. Elliott

Stephen W. Elliott, OBA #2685

Matthew Goodin, OBA #19327

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ATTORNEYS FOR THE DEBTOR IN  
POSSESSION, PAUL TRANSPORTATION, INC.

**CERTIFICATE OF SERVICE**

This is to certify that on the 25th day of August, 2010, I electronically transmitted the above and foregoing motion to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the ECF registrants. Based on the records currently on file, the Clerk of the Court will transmit a Notice of Electronic Filing to the ECF registrants listed on the "Electronic Mail Notice List" attached hereto as Exhibit "A."

This is to further certify that on the 25th day of August, 2010, true and correct copies of the above were mailed by first class mail, postage prepaid, to all parties listed on the Service List attached hereto as Exhibit "B."

/s/Stephen W. Elliott

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## Mailing Information for Case 10-13022

### Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive e-mail notice/service for this case.

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### Manual Notice List

The following is the list of **parties** who are **not** on the list to receive e-mail notice/service for this case (who therefore require manual noticing/service). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

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## SERVICE LIST

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### Official Unsecured Creditors' Committee:

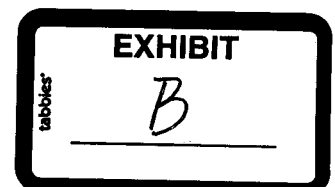
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**20 Largest Unsecured Creditors  
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Arkansas Dept of Finance & Admi  
Miscellaneous Tax Section  
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Arkansas Employmt Security Dept  
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Little Rock, AR 72203-8007



Colorado Department of Labor &  
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Colorado Dept of Revenue  
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Indiana Dept of Revenue  
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Indianapolis, IN 46207-7221

Indiana Department of Revenue  
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Kansas Employment Security Fund  
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